UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
BROOKHART, PENLAND, and ARGUELLES[1]
Appellate Military Judges

UNITED STATES, Appellee
v.
Specialist CHANCE K.J. HARRIS
United States Army, Appellant

ARMY 20210133

Headquarters, 25th Infantry Division
Mark A. Bridges, Military Judge
Colonel Marvin J. McBurrows, Staff Judge Advocate

For Appellant: Colonel Michael C. Friess, JA; Lieutenant Colonel Dale C. McFeatters, JA; Major Rachel P. Gordienko, JA; Captain Lauren M. Teel, JA (on brief).

For Appellee: Colonel Christopher B. Burgess, JA; Lieutenant Colonel Craig J. Schapira, JA; Major Mark T. Robinson, JA; Major Jennifer A. Sundook, JA (on brief).

19 July 2022

SUMMARY DISPOSITION

This opinion is issued as an unpublished opinion and, as such, does not serve as precedent.

PENLAND, Judge:

A military judge sitting as a general court-martial convicted appellant, consistent with his pleas, of one specification of larceny and one specification of robbery, in violation of Articles 121 and 122, Uniform Code of Military Justice, 10 U.S.C. §§ 921 and 922 [UCMJ]. The military judge sentenced appellant to a bad-conduct discharge, confinement for sixteen months, and reduction to E-1.

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[1] Judge Arguelles decided this case while on active duty.

Appellant now asserts two closely-related assignments of error. First, he requests we consider whether his rights were violated when he faced either: trial by a military judge to whom he objected after that judge found him improvident in a prior guilty plea; or withdrawing from a second plea agreement based on the military judge's refusal to assign another judge to his case. Second, citing Rule for Courts-Martial [R.C.M.] 902(a) and its requirement that a military judge disqualify himself in any proceeding in which his impartiality might reasonably be questioned, appellant asks whether the military judge erred by presiding over his case when he had previously assured appellant he would have a different judge after rejecting his first attempt to plead guilty. We answer no to both questions.[2]

BACKGROUND

Appellant was initially charged with, among other things, robbing another Soldier of $55,000. He negotiated a plea agreement, which included his promise to request trial by military judge alone. Appellant tried to plead guilty in accordance with the agreement, but he was not provident to all aspects of the robbery charge. The convening authority withdrew from the agreement, and the military judge said of future proceedings:

> [M]ore than likely I am going to detail a different judge to that trial. . . .[T]he only reason I wouldn't do that is if the defense affirmatively waives any issues regarding me remaining as the military judge on this case. I certainly think I can be impartial, and won't be [a]ffected by anything I've heard in ruling on this case. But I do recognize that because of the nature of a rejected guilty plea, if the defense wants a new judge then I will get a new judge in here.

Appellant reached a second plea agreement with the convening authority, again promising to request trial by military judge alone. Before the subsequent 39(a) session, the military judge informed the parties that, despite his earlier statement about detailing another military judge, he would remain on the case:

> After reading [the second] plea agreement, as well as reading the new stipulation of fact . . . what the accused now intends to plead guilty to is consistent with the facts that he was telling me in the last providence inquiry that

[2] We have given full and fair consideration to the matter personally raised by appellant pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), and find it to be without merit.

> we conducted . . . . I notified the parties that I am no longer going to detail [another military judge] to this case, but I'm going to remain the detailed judge in the case and that's because I don't believe I'm disqualified in any way from proceeding.

Alleging implied bias, defense counsel challenged the military judge based on his hearing appellant's initial guilty plea inquiry. Defense counsel argued that the military judge might hold against appellant any inconsistency between the first and second inquiries. The military judge denied the challenge, citing the not-uncommon practice of judges who reject an improvident guilty plea, then remain on the case to hear a subsequently-provident guilty plea. He then determined that appellant had not withdrawn his earlier request for trial by military judge alone, and he ascertained appellant still wanted trial by that forum. The military judge recognized but did not rule on appellant's second judge-alone request, Appellate Exhibit VIII, which appellant had signed the day before. Instead, the military judge indicated that the initial judge-alone request, which he had approved months earlier as part of the initial guilty plea inquiry, was still in effect. During the subsequent inquiry, the military judge asked appellant whether his judge-alone request was voluntary; he said it was.

LAW AND DISCUSSION

Soldiers are entitled to have an impartial military judge preside over their courts-martial. Accordingly, a military judge shall "disqualify himself or herself in any proceeding in which that military judge's impartiality might reasonably be questioned." R.C.M. 902(a).

We review a military judge's decision on a challenge for cause against himself or herself for an abuse of discretion. *United States v. Uribe*, 80 M.J. 442, 446 (C.A.A.F. 2021). On the other hand, we review de novo questions involving a military judge's compliance with the UCMJ or R.C.M. *United States v. St. Blanc*, 70 M.J. 424, 427 (C.A.A.F. 2012). We apply this more exacting standard of review to assess whether appellant's forum request was voluntary.

First, the military judge's decision to remain on the case—even after he indicated he would not do so—was well within the bounds of reasonable discretion. We are aware of no common law principle, statutory requirement, or regulatory provision that prohibited the military judge from presiding over this case after initially and correctly judging appellant was improvident. *United States v. Winter*, 35 M.J. 93 (C.M.A. 1992), is instructive on this point, for our superior court concluded that a military judge did not err in presiding over a contested bench trial after rejecting an improvident plea in the case. Instead, the court observed: "There is no *per se* rule that military judges are disqualified whenever, after accepting

guilty pleas, they must later reject those pleas based on unforeseen circumstances." *Winter*, 35 M.J. at 95. An appellant must demonstrate that the circumstances of the case require recusal; and, he simply has not done so here. We presume military judges know and follow the law. *United States v. Erickson*, 65 M.J. 221, 225 (C.A.A.F. 2007). And, nothing in this case rebuts that presumption. Instead, the military judge assured the parties that he would reach findings based solely on the information presented in the second guilty plea inquiry.

Second, there is no indication from the record that involuntariness tainted appellant's forum choice, his decision to enter a plea agreement, or his decision to remain bound by the plea agreement. These decisions are reserved to an accused at a court-martial; they cannot be outsourced to defense counsel. *Florida v. Nixon*, 543 U.S. 175, 187 (2004). The military judge specifically asked appellant whether his forum choice was voluntary, and he responded that it was. The military judge also asked appellant, "Did you enter the agreement of your own free will?" Appellant responded, "Yes, Your Honor." Based on the circumstances, we do not doubt the voluntariness of any of appellant's decisions.

CONCLUSION

Upon consideration of the entire record, the findings of guilty and the sentence are AFFIRMED.

Senior Judge BROOKHART and Judge ARGUELLES concur.

FOR THE COURT:

JAMES W. HERRING, JR.
Clerk of Court